

The Honorable Barbara J. Rothstein

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JOSH KLEIN; COVALENCE CAPITAL  
LLC,

Plaintiffs,

vs.

DOUGLAS JAE WOO KIM,

Defendant.

Case No. 2:20-cv-01628-BJR

ORDER ON ATTORNEYS' FEES

**I. INTRODUCTION**

Plaintiffs Josh Klein and Covalence Capital, LLC, filed this lawsuit against defendant Douglas Jae Woo Kim, alleging Defendant fraudulently induced Plaintiffs to lend him money for cryptocurrency trading and then breached the parties' contract. In March 2022, the Court granted Plaintiffs' motion for summary judgment as to their breach of contract claim but denied the motion as to their fraud claim. Dkt. 75. In July 2022, Plaintiffs voluntarily dismissed their fraud claim, and the Court ordered briefing on the parties' remaining dispute regarding damages for breach of contract. Dkt. 78. In an October 19, 2022 order, the Court held that Plaintiffs could recover the principal and interest on defaulted loans, but not late fees. Dkt. 85. The Court also noted that it was undisputed Plaintiffs could recover attorneys' fees based on provisions in the breached agreements. *Id.* at 10. As Plaintiffs damages' calculations did not separate late fees from other

1 damages, the Court ordered Plaintiffs to file an amended declaration limited to principal and  
2 interest. *Id.* at 11. The Court also instructed Plaintiffs to file a separate declaration with a  
3 breakdown of reasonable attorneys' fees and costs. *Id.* The Court allowed Defendant to file  
4 objections to either declaration. *Id.*

5 Defendant objected only to Plaintiffs' calculation of attorneys' fees. Dkt. 89. Defendant  
6 contends that Plaintiffs are entitled only to fees related to their successful breach of contract claim  
7 and not their voluntarily dismissed fraud claim. Defendant further argues that Plaintiffs should not  
8 be awarded any fees, even on the contract claim, because they failed to segregate the hours billed  
9 to each claim. Even if the Court were to award some fees on one or both claims, Defendant argues  
10 the award should be reduced because of excessive "block-billing" and fees improperly related to  
11 non-legal tasks performed by attorneys.  
12

13 Plaintiffs contends that the contractual provisions governing attorneys' fees encompass fees  
14 incurred litigating related claims and that their fraud claim is sufficiently related. Dkt. 91 at 2-6, 7-  
15 9. Plaintiffs dispute that they block-billed or charged for non-legal work. *Id.* at 9-10.  
16

## 17 II. DISCUSSION

18 As an initial matter, the Court finds that Plaintiffs' attorneys fees must be limited to their  
19 contract claim. Generally, a contractual fee-shifting provision entitles a party only to fees related  
20 to claims brought under the contract. *Boguch v. Landover Corp.*, 153 Wn. App. 595, 600, 615  
21 (2009). Furthermore, a party cannot recover fees related to claims that were not successful, and  
22 voluntarily dismissed claims do not qualify as successful. *Nordstrom, Inc. v. Tampourlos*, 107 Wn.  
23 2d 735, 743-44 (1987); *MBK Constructors v. Am. Zurich Ins. Co.*, 83 F. Supp. 3d 1078, 1089 (W.D.  
24 Wash. 2015); *Miller v. Kenny*, 180 Wn. App. 772 (2014)). Despite Plaintiffs' argument to the  
25 contrary, the fee-shifting provision in the parties' agreements does not encompass fees related to  
26 non-contract claims. The provision states that, "[i]f Borrower shall be in default and placed for  
27

1 collections, borrower shall pay all reasonable attorney fees and costs of collections.” *See* Dkt. 91  
2 at 7 (citation omitted). Nothing in this phrase implies Plaintiffs are entitled to fees outside of the  
3 contract, and thus there is no reason not to apply the general rule that fees are limited to Plaintiffs’  
4 contract claim.

5       The Court also finds that a significant portion of Plaintiffs’ fees are related exclusively to  
6 their fraud claim. In its opposition to summary judgment, Defendant did not dispute that he had  
7 breached the parties’ loan agreements. Although Plaintiffs’ contract claim was not entirely  
8 uncontested, as Defendant raised affirmative defenses, Plaintiffs devoted less briefing to it, and the  
9 Court granted summary judgment for Plaintiffs without a difficult analysis. Furthermore, while the  
10 contract claim was settled by the parties in March 2022, the fraud claim was not resolved until July.  
11 It is not clear from the record what portion of Plaintiffs’ discovery efforts was directed at the fraud  
12 claim. This is in large part because Plaintiffs failed to segregate the attorney time dedicated to each  
13 claim. Although the Court rejects Defendant’s suggestion that Plaintiffs’ failure to segregate fees  
14 justifies awarding them no attorneys’ fees at all,<sup>1</sup> the Court finds that Plaintiffs are not entitled to a  
15 generous assumption with respect to ambiguities that their lack of diligence created. This also  
16 includes how much time was spent drafting the fraud portions of pleadings and what percentage of  
17 the parties’ negotiations and communications centered on that claim alone.

18       In view of these uncertainties, the Court will award Plaintiffs 45% of their requested fees  
19 for the estimated time spent litigating their successful contract claim. The Court declines to reduce  
20  
21  
22  
23

---


24 <sup>1</sup> In the cases cited by Defendant to support their position, the parties seeking fees had been  
25 expressly ordered to segregate fees but failed to do so. *See Melland v. Cornerstone Dental, PC*,  
26 No. C13-5413, RJB, 2015 WL 11233146, at \*2 (W.D. Wash., Feb. 2, 2015), *aff’d*, 691 F. App’x  
27 354 (9th Cir. 2017); *Loffelholz*, 119 Wn. App. at 692; *Schmidt v. Cornerstone Invest., Inc.*, 115 Wn.  
2d 148, 171 (1990). That is not the case here. Plaintiffs should have segregated their fees, but their  
lack of diligence is not so egregious as to justify voiding an otherwise valid provision of the parties’  
contracts.

1 the award further for block-billing or inappropriate non-legal work as the Court finds Defendant's  
2 criticisms on these points to be overstated.

3 **III. CONCLUSION**

4 In accordance with Plaintiffs' undisputed calculation of their contractual damages,  
5 Defendant is hereby ordered to pay, no later than February 22, 2023, the amounts of principal and  
6 interest outlined and denominated in various currencies in the November 7, 2022 declaration of  
7 Josh Klein (Dkt. 87). By February 22, 2023, Defendant is ordered to pay \$217,287.31 in attorneys'  
8 fees, representing 45% of Plaintiffs' original estimate, as well \$3,201.30 in costs. The clerk of  
9 court is directed to calculate post-judgment interest.  
10

11 DATED this 15th day of February, 2023.

12   
13 \_\_\_\_\_  
14 BARBARA J. ROTHSTEIN  
15 UNITED STATES DISTRICT JUDGE  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27